

UNIVERSITY OF CALIFORNIA, SAN DIEGO

UCSD

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

MARIA DOLORES WESSON

COASTAL OBSERVING RESEARCH & DEVELOPMENT
CENTER
MARINE PHYSICAL LABORATORY
SCRIPPS INSTITUTION OF OCEANOGRAPHY
LA JOLLA, CALIFORNIA 92093-0202, USA
Phone: (858) 534-8041
E-mail: dwesson@ucsd.edu

May 5, 2006

The Honorable Stephen L. Johnson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its twenty-sixth meeting on April 6 and 7, 2006, in Washington D.C.

We would like to express our sincere gratitude to all the government officials who took the time to attend the meeting and brief us on various aspects of the CEC's work, including Jerry Clifford, Evonne Marzouk, and Luis Troche from the EPA Office of International Affairs. We would also like to thank Rafael De León, Mark Joyce, Oscar Carrillo, Nancy Bradley, and Geraldine Brown from the EPA Office of Cooperative Environmental Management for organizing and staffing the meeting. We would also like to thank Acting Director Barbara McLeod from the Office of International Environmental Policy, for her letter in response to our last advice letter, dated March 17, 2006.

We would like to thank all the speakers that participated in our meeting, they are: Doug Wright, CEC Secretariat, for his very useful update on CEC's programs; Susan Roberts, National Academy of Sciences, for her timely presentation on peer review models as we continue discussions on quality assurance procedures for CEC products; our colleague Dennis Aigner, University of California, Santa Barbara, for the report of the NAC *ad hoc* committee on private sector involvement; Charles Auer, EPA's Office of Pollution Prevention and Toxics, for his presentations on greening the supply chain in the automotive sector; John Knox, Penn State University and former NAC Chair, for his thoughts on the future of Articles 14-15; Michael MacCracken, The Climate Institute, for his presentation on climate variability in North America; Chantal Line Carpentier, CEC Secretariat, for her overview on CEC's work and many accomplishments related to energy and the environment; Thomas Peterson, Center for Climate Strategies, for his presentation on state initiatives on renewable energy, and John Duffy, GAC member from Alaska, for his timely presentation of the effects of climate on the Alaskan environment.

We spent part of our time and attention at the meeting discussing renewable energy and climate adaptations observed throughout North America within the context of the CEC's energy programs. We also addressed the following topics: 1) private sector involvement; 2) the new CEC quality assurance and policy procedures for publications and information products; 3) working groups; 4) Articles 14 & 15; 5) hiring procedures for CEC's executive director, and 6) the expertise of the NAC members in CEC matters. It is clear that these topics will maintain their relevance to the U.S. government in the next year and we look forward to assisting EPA while continuing to reflect on how best to achieve this objective.

We want to take this opportunity to unanimously commend the Mexican government for its decision to fully fund its financial commitment to the CEC for 2006, and trust that it will again show the same strong leadership and commitment to the CEC as it prepares in June to assume the Chair of the Council, and lead the search for the next executive director. The NAC respectfully offers its assistance to its Mexican counterpart committee, the Grupo Operativo del Consejo Consultivo Nacional para el Desarrollo Sustentable as this group becomes active in its advisory role to further the mission of the NAECC and the CEC in North America.

We hope our advice is useful to EPA and other government officials as we continue to think about how best to make the CEC achieve its mission, thrive and serve the citizens of North America as it was intended to do. We look forward to meeting with you at the next Council session June 27-28 in Washington DC, if your schedule permits, as we did last year. Thank you for the opportunity to advise you on these matters.

Very truly yours,

M. Dolores Wesson
Chair, National Advisory Committee

cc: Judith Ayres, Assistant Administrator for International Affairs
Jerry Clifford, Deputy Assistant Administrator for International Affairs
Rafael de León, Director, Office of Cooperative Environmental Management
Plácido Dos Santos, Chair, U.S. Governmental Advisory Committee
Carlos Sandoval, Chair, Joint Public Advisory Committee
Jean Perras, Chair, Canadian National Advisory Committee
Patricia Muñoz, Acting Chair, Grupo Operativo del Consejo Consultivo Nacional para el Desarrollo Sustentable
Members of the U.S. National Advisory Committee:
Dennis Aigner Aldo Morell
Michael Andrews Carlos Perez
Karen Chapman Anne Perrault
Irasema Coronado Glen Prickett
Adam Greene Chris Wold
Richard Guimond

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2006-1 (April 11, 2006): On Expanding Partnerships with the
Private Sector and Other Stakeholders Initiative**

In the CEC Operational Plan: 2006-08, under Capacity Building, there is a project, "Improving Private and Public Sector Environmental Performance" that includes a component on greening supply chains in Mexico. This project states, "The project engages Mexican industry, including small and medium enterprises (SMEs) in activities designed to develop approaches and mechanisms that can be applied elsewhere in Mexico. Though the project is focused on Mexico's needs, it shall involve, and its benefits will extend to, all three countries." It is within this context, and as an enhancement to the initial project, that USEPA offered the draft proposal, "Expanding Partnerships with the Private Sector and Other Stakeholders Initiative", dated March 28, 2006.

The NAC has been involved in this initiative for over a year, beginning with a meeting with private companies that took place on April 27, 2005, and continuing with a meeting on greening supply chain issues in Mexico held in Washington DC, January 5, 2006. The NAC *ad hoc* committee on private sector involvement set up under Advice 2005-5, (November 11, 2005), also contributed a draft proposal after the January 5, 2006 meeting upon request of the USEPA. This draft, "Program to Improve Environmental Performance in the Supply Chain" was designed as an enhancement of the CEC project.

Below we summarize the NAC *ad hoc* committee recommendations to the CEC following the January meeting, with annotations in reference to the USEPA proposal dated March 28, 2006.

- 1) ***NAC recommendation: Focus should be on the top 100 multinationals engaged in export production in Mexico. Initial sectors recommended are: 1) telecommunications and computers, 2) automotive, and 3) medical devices and pharmaceuticals.***

The USEPA's proposed focus on the automotive industry fits within this scope.

- 2) ***NAC recommendation: Building on CEC's existing work on greening the supply chain in Mexico, first engage companies on the***

top 100 list that are already involved with GEMI, GeSI/EICC, and WEC in order to capitalize on what these groups are already doing. Get these firms to give special attention to Mexican suppliers. Have USEPA formalize their commitments.

The USEPA's proposal makes no explicit mention of working with these groups. It only makes vague reference to collaboration with other organizations, such as other government institutions, trade associations, industry groups and NGOs. It does propose building on the existing CEC work. It is not clear how the automotive companies USEPA hopes to engage relate to the top 100 list, or those companies not already working with these groups.

- 3) *NAC recommendation: Develop a recognition program for Mexican suppliers. Translate into Spanish the tools (GEMI) and systems (GeSI, WEC, CEC) that have been developed to date. Develop training programs for personnel/staff of the Mexican suppliers, building on what CEC has already done. Also, explore the possibility of engaging Mexican academic institutions (e.g., Instituto Tecnológico de Monterrey with its extensive satellite network) in the training effort. The USEPA has an established recognition program in its Green Suppliers Network that can be built upon.*

The proposal is mute about existing tools and systems that could be used and expanded. As far as training, USEPA's proposal talks about establishing a "cadre of experts" that will do this, and suggests that perhaps the automotive companies will provide staff as experts.

- 4) *NAC recommendation: Involve CONCAMIN and SEMARNAT in this work.*

The USEPA proposal contains only a vague reference to collaboration with "other government institutions" and "industry groups".

- 5) *NAC recommendation: Develop an incentive program to overcome barriers to participation by Mexican suppliers if the companies themselves cannot or will not provide resources to do the initial environmental assessment, implementation, etc. This is essential, in the opinion of CONCAMIN.*

Nothing is said about incentives in the USEPA proposal.

USEPA's proposal talks about engaging automotive companies whose supply chains "cross North American borders" and thus, it would seem, envisions this work expanding to all three countries. But no details are provided on exactly how this would be done and what it would cost. (Or whether it is appropriate.) The proposal contains a 5-year plan with budget estimates that are still restricted to the automotive industry. All other projects in the operational plan for the CEC appear to have a maximum duration of 3 years. The NAC feels unable, without more work and discussion with USEPA and CEC, to comment on the appropriateness of the five stages of the plan or the financial resources attached to each of them.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2006-2 (May 5, 2006): Response to EPA on CEC publications and
information products**

The NAC has reviewed previous drafts related to quality assurance presented by the US government and has provided advice on this matter in its last letter (Advice 2005-8, November 11, 2005). The NAC discussed the new CEC document entitled "Quality Assurance Policy and Procedures: Publications and Information Products" distributed for the first time at this meeting.

This document was developed with the input of a tri-national group of experts and builds and improves on current practices for quality assurance in the CEC. This general framework for quality assurance covers all the information products and publications developed by the CEC, as well as all data and information management activities. Because it applies to a very wide array of products and services, it provides a graded approach for internal and external review depending on the category of information product or service in question. It also includes detailed Quality Assurance Plans, and Data and Information Quality Assurance Plans for all the approved projects in the operational plan for 2006 under Annex 2.

Recommendation: The NAC congratulates the Parties and the Secretariat for the successful completion of this key document and strongly recommends that it be adopted by the Council and implemented as soon as possible by the Secretariat.

Related also to information and outreach is the need for better tracking and reporting of the accomplishments of the CEC over its history, an issue that the NAC has also addressed in past advice. In many instances we have heard from government officials that there is a widespread lack of awareness of the accomplishments of the CEC. Tracking and reporting changes on the ground brought about by CEC projects, activities and reports, is essential to explain value and justify the cost of the CEC to its many constituencies, particularly in times of changing administrations in all three countries. Once again, we encourage the CEC to give serious consideration to implementing a method for keeping track of and publicizing success stories, accomplishments, and other positive changes catalyzed by its many activities throughout North America.

Recommendation: The NAC recommends that the Secretariat set up a method to keep track of successes related to its activities, and make this information widely available and accessible through the publication of brochures, the CEC web site, or any other methods as appropriate.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2006-3 (May 5, 2006): Response to EPA on working groups

The NAC provided advice on the issue of working groups in its last letter. See Advice 2005-7 (November 16, 2005). In essence, the NAC recommended the dissolution of all working groups established by the Council under Article 9(5) and the creation of new ones mirroring the three pillars. The NAC further recommended that the structure and functioning of these working groups be simplified and harmonized; their roles, responsibilities and reporting lines clearly defined, and their configuration posted on the web to facilitate coordination and access.

The last USEPA deliberative draft, “Structure and Operation of CEC Working Groups (WGS),” proposes keeping the working groups for Chemicals, Air, Biodiversity and Enforcement, as they are presently configured. In addition, three new working groups will be created for the three Puebla declaration pillars: Information, Capacity Building, and Trade and Environment. The existing 10(6) working group will be reconfigured as part of the new Trade and Environment working group, and PRTR will become part of the Information Pillar. The total number of working groups under Article 9(5) in this proposal is seven.

Although it is perfectly conceivable that one working group should advise several projects, as would be the case for the three working groups under the Puebla declaration pillars, it is not advisable that any project should have several working groups providing advice at the same time. Under the last proposal, projects in the operational plan would be assigned anywhere from one to five different working groups. For example, the North American Atlas would be taking direction from five different working groups. Most projects would have at least two working groups overseeing their activities. Reaching consensus in the event of any small disagreement or contradictory advice could paralyze a project for significant amounts of time. It is hard to see how this system would create anything but confusion and add to the administrative burden of the Parties, the CEC and the managers of the individual projects.

Recommendation: The NAC finds the proposed ‘matrix’ of both ongoing and new working groups unnecessarily cumbersome. Having more than one working group advising any given project will add unnecessary complexity to the management of the projects with no clear benefit in terms of strengthening its implementation. Each CEC project should be advised by no more than one working group unless there is a very clear and well-articulated justification to do so.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2006-4 (May 5, 2006): On Articles 14 & 15

The citizen submissions process of the North American Agreement on Environmental Cooperation (NAAEC) has been considered an innovative mechanism for involving citizens in discussions on trade and its effects on the environment. It is an important element for achieving the NAAEC's goal to promote transparency and public participation in the development of environmental law, to strengthen cooperation to develop and improve environmental practices, and to enhance compliance with, and enforcement of environmental laws.

The citizen submission process also provides a valuable opportunity for North Americans to address enforcement issues in the context of regional free trade. It is widely regarded as the most innovative and closely watched aspect of the NAAEC. Many have regarded this process as a potential model for accountability and governance for a new breed of international institutions – a positive response to globalization that gives civil society a voice in the often-impenetrable affairs of international organizations.

Since the entry into force of the NAAEC, more than 50 citizen submissions have been filed with the CEC Secretariat. Of these, only nine have been directed at the U.S., and only twice has the Secretariat recommended the development of a factual record concerning enforcement matters in the U.S. Executive Order 12915 dated May 13, 1994 on implementation of the NAAEC states: "To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat... informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record."

Given the small number of total submissions, and the extremely small number of submissions for which the Secretariat has recommended the development of a factual record in total, the NAC believes that the U.S. government should assume a leadership role in this regard, and announce its support for the preparation of factual records concerning the U.S. Not only will promptly announcing support for the development of factual records concerning the U.S. demonstrate leadership, it will also underscore the commitment of the U.S. government to the NAAEC.

Recommendation: The NAC recommends that the U.S government support the development of factual records concerning U.S. enforcement matters, and approve the development of such factual records at the first Alternative Representatives meeting following the publication of the recommendation by the Secretariat. Furthermore, the NAC recommends that the US government approve any factual records recommended by the Secretariat as presented, and not modified to reduce the scope, as has been the case in recent history.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

**Advice 2006-5 (May 5, 2006): On Procedures for Hiring the CEC
Executive Director**

The importance of strong and effective leadership in any institution is vital to its success. That is even more so within international institutions, where the Executive Director must lead her/his staff, and work closely with the member governments of the institution, civil society, the private sector, academia and the public at large.

Although the NAAEC requires that the position of Executive Director rotate consecutively between nationals of each Party, it provides no other direction concerning the process for selecting the Executive Director. Article 11(4) of the NAAEC also requires that the Executive Director, and his/her staff, do not “seek or receive instructions from any government or any other authority external to the Council” and prohibits any Party from seeking to influence the Executive Director or CEC staff. It provides no other qualifications for this position.

The Council does not appear to have any written procedures for hiring the Executive Director, nor a list of qualifications. The NAC believes that the Council would be well served by a set of procedures for hiring that also describes the general qualifications for the position. By ensuring that the Executive Director is independent of the Parties, the Parties can also be assured that staff are hired “strictly on the basis of efficiency, competence and integrity”, as required by Article 11(2).

Recommendation: The NAC suggests that the U.S. government work closely with Mexico and Canada to develop hiring procedures and qualifications for the position of the Executive Director. The NAC further suggests that this process include a mechanism for consulting with civil society representatives from the three Parties in reaching a list of finalists. The NAC, and its members, will be pleased to provide advice in the development and implementation of this process in any way needed.

National Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

Advice 2006-6 (May 5, 2006): National Advisory Committee expertise and responsibilities

In an effort to enhance the effectiveness of the NAC, and maintain its ability to monitor progress related to the wide range of activities related to the CEC, individual members of the committee have identified their areas of expertise and interest, and have volunteered to keep track of specific project areas. These members will take the lead in committee discussions in the areas identified below, and have agreed to monitor developments related to those areas between meetings. As was requested in past advice (Advice 2003-14), we ask that EPA and other US government agencies keep our designated NAC members informed, to the extent possible, on all relevant developments in these areas as they arise.

To that end, we request that you provide our members with information related to their areas of interest—i.e., CEC working group meetings, reports, publications or any other information relevant to those areas or projects. The following two lists identify the interests of current NAC members, first by member, and second by CEC project:

1. NAC members:

Dennis Aigner – environmental economics; business and the environment; market solutions

Karen Chapman – water; wildlife; ecosystems; energy; NAFTA effects

Irasema Coronado – cross-border cooperation; border politics; water quality and quantity, environmental justice and policy

Adam Greene – trade and environment; trilateral cooperation and capacity building; public-private initiatives

Richard Guimond – NAFTA effects; environmental stewardship; finance and the environment

Aldo Morell – emissions tracking; regulatory capacity building; industry/government cooperation; sustainable development

Carlos Perez – public/private sector initiatives; capacity building; compliance

with environmental; health and safety regulations

Anne Perrault – biodiversity; freshwater; invasive species

Glen Prickett – business leadership and the environment; biodiversity; climate change; development assistance and environment

Dolores Wesson – marine and freshwater issues; environmental indicators; NAFTA effects

Chris Wold – NAFTA effects; trade and environment; biodiversity; marine issues

2. Projects of interest:

Mandatory/Core Programs

- 1) Citizen Submissions (Chris Wold, Adam Greene)
- 2) Article 13 (Dolores Wesson, Chris Wold)

Cooperative Work Plan

I. Information for Decision Making

- 1) Monitoring and Assessing Pollutants in North America (Aldo Morell, Adam Greene)
- 2) Tracking Pollutant Releases and Transfers in North America (Aldo Morell, Irasema Coronado)
- 3) Enhancing North American Air Quality Management (Karen Chapman, Irasema Coronado)
- 4) Mapping North American Environmental Issues (Dolores Wesson, Anne Perrault)
- 5) Reporting on the State of the North American Environment (Dolores Wesson)
- 6) Managing CEC Environmental Information (Chris Wold, Dolores Wesson)

II. Capacity Building

- 1) Strengthening Wildlife Enforcement Capacity (Karen Chapman, Irasema Coronado)
- 2) Improving Private and Public Sector Environmental Performance (Adam Greene, Aldo Morell, Carlos Perez, Dennis Aigner, Glen Prickett)
- 3) Building Local Capacity for Integrated Ecosystem Management and to Conserve Critical Species and Spaces (Irasema Coronado, Karen Chapman, Glen Prickett)
- 4) Sound Management of Chemicals (Carlos Perez, Richard Guimond)

III. Trade and Environment

- 1) Promoting the North American Renewable Energy Market (Aldo Morell, Dennis Aigner, Karen Chapman, Glen Prickett)

- 2) Encouraging Green Purchasing (Dennis Aigner, Aldo Morell, Adam Greene, Glen Prickett)
- 3) Harnessing Market Forces for Sustainability (Dennis Aigner, Aldo Morell, Glen Prickett)
- 4) Trade and Enforcement of Environmental Laws (Chris Wold, Aldo Morell, Adam Greene)
- 5) Guidelines for Risk Assessment of Invasive Alien Species and their Pathways (Dolores Wesson, Anne Perrault)
- 6) On-going Environmental Assessment of NAFTA (Dennis Aigner, Karen Chapman, Aldo Morell, Chris Wold)